

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	PLAINTIFF WAYNE BERRY'S
vs.)	MOTION <i>IN LIMINE</i> TO
)	EXCLUDE EVIDENCE OF
HAWAIIAN EXPRESS SERVICE,)	PLAINTIFF MR. BERRY'S
INC., a California corporation; et al.)	ALLEGED <i>VENDETTA</i>
)	
Defendants.)	
)	
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)	

**PLAINTIFF WAYNE BERRY'S MOTION *IN LIMINE* TO EXCLUDE
EVIDENCE MR. BERRY'S ALLEGED *VENDETTA***

Comes now Plaintiff WAYNE BERRY, by and through his attorneys, Lynch
Ichida Thompson Kim & Hirota, and moves this Honorable Court for an order
prohibiting Defendants from wasting the jury's time and thereby opening the door
regarding the history of Fleming's conduct and what the PCT claims is a
"vendetta."

Further, should Fleming attempt to raise the "vendetta" that it claims is the
reason for Mr. Berry protecting his copyrights, this case will descend into a

irrelevant farce. More importantly, when the door opens on the Fleming conduct that its own lawyers have now conceded involved fraudulent and criminal conduct, Mr. Berry should be permitted to rebut the claim of vendetta with proof of Fleming's own misconduct and specifically the proof that Mark Dillon misrepresented, under oath, the scope of the infringement that was the foundation for the Court's grant of summary judgment on the issue of "inadvertence" and the lack of proof of willful infringement.

By the PCT's own admission, it's defense to the damages in this case will be to claim that Fleming is the blameless victim of Mr. Berry's "vendetta." Should Fleming open the door on its conduct then the interlocutory findings that Fleming's conduct was not willful must be reopened too and the actual evidence that was absent prior to the grant of summary judgment on this issue that shows that Fleming, Mark Dillon and the Fleming expert misrepresented the scope of the infringement must be fair game and Mr. Berry should be able to rebut this theory with additional evidence regarding willful infringement. This motion is made pursuant to Rules 401 and 402 of the Federal Rules of Evidence, and is based on the memorandum of law attached hereto, the records and files herein, and such

other matters as may be presented to the Court at the hearing of this matter.

Dated: Honolulu, Hawaii

JAN 3 2006

A handwritten signature in black ink, appearing to read "Timothy J. Hogan", written over a horizontal line.

TIMOTHY J. HOGAN

Attorney for Plaintiff

Wayne Berry